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16 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT  
18 DISTRICT OF NEVADA

19 JAMES CURREY, SR., J.C., a minor by and  
20 through his guardian ad litem JAMES CURREY;  
21 EMERIO RIVERA, AMALIA RIVERA,  
22 J.R.R.C., a minor by and through his guardian ad  
23 litem DENISE RIVERA; ROBERT PITTS,  
24 REBECCA PITTS, and K.B.P. a minor, by and  
25 through her guardian ad litem, REBECCA  
26 PITTS,

27 Plaintiffs,

28 v.

29 CARSON CITY SCHOOL DISTRICT; LEE  
30 CONLEY; SUSAN MOULDEN; JAN  
31 ALBERTSON; VALENTINA MIDBOE;  
32 JENNIFER PALMER; TRAVIS LEE; CARLI  
33 BIANCHI and DOES 1-30;

34 Defendants.

PETER D. DURNEY, ESQ.  
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Reno NV 89509  
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3:17-cv-00386-WGC

**CONFIDENTIALITY AGREEMENT  
AND PROTECTIVE ORDER**

1 Pursuant to the Stipulation contained herein by and among counsel for Plaintiffs and  
2 counsel for Defendants, the Court hereby finds as follows:

3 PURPOSES AND LIMITATIONS

4 Disclosure and discovery activity in this action are likely to involve production of  
5 confidential, proprietary, or private information for which special protection from public  
6 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
7 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
8 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
9 all disclosures or responses to discovery, or any categories of information not specifically  
10 addressed herein, and that the protection it affords from public disclosure and use extends only to  
11 the limited information or items that are entitled to confidential treatment under the applicable  
12 legal principles, and designated "confidential" as described herein. The parties further  
13 acknowledge, as set forth further below, that this Stipulated Protective Order does not entitle them  
14 to file confidential information under seal or otherwise change Federal or Local rules, procedures,  
15 and standards to be applied when a party seeks permission from the court to file material under  
16 seal.

17 1. The "Litigation" shall mean the above-captioned case, filed in the United States  
18 District Court, District of Nevada Case No. 3:17-cv-00386-HDM-WGC.

19 2. "Documents" or "Information" shall mean and include any documents or portions  
20 thereof, or information extracted therefrom, (whether in hard copy or electronic form), records,  
21 correspondence, analyses, assessments, statements (financial or otherwise), responses to  
22 discovery, tangible articles or things, whether documentary or oral, and other information  
23 provided, served, disclosed, filed, or produced, whether voluntarily or through discovery or other  
24 means, in connection with this Litigation. A draft or non-identical copy is a separate document  
25 within the meaning of these terms.

26 3. "Party" (or "Parties") shall mean one party (or all parties) in this Litigation and  
27 their in-house and outside counsel. "Producing Party" shall mean any person or entity who  
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1 provides, serves, discloses, files, or produces any Documents or Information. "Receiving Party"  
2 shall mean any person or entity who receives any such Documents or Information.

3 4. Any Party may designate any document, object, file, photograph, video, tangible  
4 thing, interrogatory answers, answers to requests for admissions, testimony, or other material or  
5 copies thereof (collectively, the "Discovery Material") as "Confidential Information" or following  
6 a good faith determination that the information so designated is or may reveal confidential, or  
7 proprietary matters.

8 EXERCISE OF RESTRAINT AND CARE IN DESIGNATING MATERIAL FOR  
9 PROTECTION

10 5. Each Party or Non-Party that designates information or items for protection under  
11 this Order must take care to limit any such designation to specific material that qualifies under the  
12 appropriate standards. Indiscriminate or routinized designations are prohibited.

13 MANNER AND TIMING OF DESIGNATIONS

14 6. CONFIDENTIAL Documents shall be so designated prior to their production by  
15 marking or stamping each page of the Document produced to or received from a Party with the  
16 legend "CONFIDENTIAL." The application of the legend must be made in a manner so as not to  
17 render the documents illegible, illegible after photocopying, or incapable of being subjected to  
18 Optical Scanning Recognition. If only a portion or portions of the material on a page qualifies for  
19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
20 appropriate markings in the margins).

21 7. Testimony taken at a deposition, or in other pretrial or trial proceedings, may be  
22 designated as CONFIDENTIAL by any Party making a statement to that effect on the record at  
23 the deposition. Arrangements shall be made with the court reporter taking and transcribing such  
24 deposition to separately bind such portions of the transcript and deposition exhibits containing  
25 Information designated as CONFIDENTIAL, and to label such portions appropriately. Counsel  
26 for the Parties may also designate an entire deposition transcript as CONFIDENTIAL at the time  
27 of the deposition. A party's failure to designate testimony confidential at the time of deposition  
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1 shall not constitute the party's waiver of its right to correct its failure prior to a date ten business  
2 days after the party's receipt of the transcript, in which case all receiving parties shall honor the  
3 late designation as it would an inadvertent disclosure pursuant to paragraph 16 below.

4 8. For information produced in some form other than documentary and for any other  
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
6 or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a  
7 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
8 practicable, shall identify the protected portion(s).

9 ACCESS TO AND USE OF PROTECTED MATERIAL

10 9. CONFIDENTIAL Information shall be maintained in strict confidence by the  
11 Parties who receive such information, shall be used solely for the purposes of this Litigation, and  
12 shall not be disclosed to any person except:

13 (a) The United States District Court, District of Nevada, or any other court to  
14 which this matter may be transferred (the "Court"), so long as the party seeking to file a  
15 confidential document under seal complies with the Ninth Circuit's directives in *Kamakana v. City*  
16 *and County of Honolulu*, 447 F.3d 1172 (9<sup>th</sup> Cir. 2006) and the Court's electronic filing procedures  
17 set forth in Local Rule 10-5(b);

18 (b) In the event of an appeal, the United States Court of Appeals (the "Appellate  
19 Court") and/or the United States Supreme Court (the "Supreme Court"), so long as that document  
20 is filed under seal;

21 (c) The attorneys of record in this Litigation and their co-shareholders, co-  
22 directors, partners, employees, and associates who are assisting in the Litigation (collectively  
23 hereafter referred to as "Outside Counsel");

24 (d) A Party, or an officer, director, or employee of a Party or of a Party's  
25 affiliate, as long as any such person agrees to be bound by the terms and conditions of this  
26 Agreement.

27 (e) Subject to the terms of Paragraph 14 below, experts or consultants and their  
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1 staff, retained by the Parties and/or Outside Counsel in this Litigation for the purposes of this  
2 Litigation;

3 (f) Any other person, only if the Receiving Party has given written notice to  
4 the Producing Party of an intent to disclose specified CONFIDENTIAL Information to said person,  
5 who shall be identified by name, address, phone number, and relationship, if any, to the Receiving  
6 Party, and the Producing Party has not provided a written objection to the disclosure within ten  
7 (10) business days of delivery of the notification. In the event of an objection, no disclosure shall  
8 be made pending the resolution of the objection. If the disclosure includes information that is  
9 protected by FERPA, the objection can only be resolved by stipulation of the parties or court order  
10 which includes a provision allowing CCSD to provide no less than fourteen (14) days' notice to  
11 the parents of the children that may be implicated in any disclosure. Before any person may receive  
12 Documents or Information pursuant to this subparagraph, he or she must comply with the  
13 requirements of Paragraph 13 below.

14 (g) Any person identified on the document itself as having created, sent, received,  
15 or otherwise already viewed, the document.

16 (h) Any person testifying at deposition in this matter, subject to the paragraph 9  
17 below.

18 10. If a witness is providing or is provided CONFIDENTIAL Information during a  
19 deposition, counsel for the Producing Party may request that all persons other than the witness and  
20 persons entitled by this Order to have access to the CONFIDENTIAL Information leave the  
21 deposition room during that portion of the deposition other than the court reporter. Failure of any  
22 person to comply with such a request will constitute sufficient justification for the witness to refuse  
23 to answer the question, or for the Producing Party to demand that CONFIDENTIAL Information  
24 not be provided to the witness, pending resolution of the issue.

25 CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 11.1 a) Any Party or Non-Party may challenge a designation of confidentiality at any time.  
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1 b) Unless a prompt challenge to a Designating Party's confidentiality designation is  
2 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or  
3 a significant disruption or delay of the litigation, a Party does not waive its right to  
4 challenge a confidentiality designation by electing not to mount a challenge promptly after  
5 the original designation is disclosed.

6 11.2 a) The Challenging Party shall initiate the dispute resolution process by providing written  
7 notice of each designation it is challenging and describing the basis for each challenge.

8 b) To avoid ambiguity as to whether a challenge has been made, the written notice must  
9 recite that the challenge to confidentiality is being made in accordance with this specific  
10 paragraph of the Protective Order.

11 c) The parties shall attempt to resolve each challenge in good faith and must begin the  
12 process by conferring directly (in voice to voice dialogue; other forms of communication  
13 are not sufficient) within 14 days of the date of service of notice.

14 d) In conferring, the Challenging Party must explain the basis for its belief that the  
15 confidentiality designation was not proper and must give the Designating Party an  
16 opportunity to review the designated material, to reconsider the circumstances, and, if no  
17 change in designation is offered, to explain the basis for the chosen designation.

18 e) Neither Party may proceed to the next stage of the challenge process unless it has  
19 engaged in this meet and confer process first or establishes that the other Party is unwilling  
20 to participate in the meet and confer process in a timely manner.

21 f) If, at the conclusion of the meet and confer process the dispute has not been resolved, or  
22 if after 14 days from the date of the notice of challenge, Challenging Party alleges that it  
23 has been established that Designating party has is unwilling to participate in the meet and  
24 confer process in a timely manner, Challenging Party shall provide Designating Party with  
25 written notice that they have 14 days to file a motion to establish confidentiality pursuant  
26 to paragraph 11.3, otherwise the confidential designation is automatically waived.  
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1 g) If after 14 days has passed Designating Party has not filed a motion pursuant to  
2 paragraph 11.3, all parties shall consider the confidential designation waived for each  
3 disputed document.

4 11.3 a) If the Parties cannot resolve a challenge without court intervention, the Designating  
5 Party shall file and serve a motion to establish confidentiality within 14 days of receiving  
6 notice from Challenging Party of their deadline to do so. Any oppositions and replies are  
7 to be filed and served in compliance with Local Rules 7-2 and 7-3.

8 b) Each such motion must be accompanied by a competent declaration affirming that the  
9 movant has complied with the meet and confer requirements imposed in the preceding  
10 paragraph.

11 c) The burden of persuasion in any such challenge proceeding shall be on the Designating  
12 Party.

13 d) Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
15 sanctions.

16 e) Unless the Designating Party has waived the confidentiality designation by failing to file  
17 a motion to retain confidentiality as described above, all parties shall continue to afford the  
18 material in question the level of protection to which it is entitled under the Producing  
19 Party's designation until the court rules on the challenge.

20 INADVERTENT FAILURE TO DESIGNATE

21 12. The inadvertent production of any Information without it being properly marked or  
22 otherwise designated shall not be deemed to waive any claim of confidentiality with respect to  
23 such Information. If a Producing Party, through inadvertence, produces any CONFIDENTIAL  
24 Information without marking or designating it as such in accordance with the provisions of this  
25 Order, including deposition testimony, the Producing Party may, promptly on discovery, furnish a  
26 substitute copy properly marked along with written notice to all Parties (or written notice alone as  
27 to non-documentary Information) that such Information is deemed CONFIDENTIAL and should  
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1 be treated as such in accordance with the provisions of this Order. Each receiving person must  
2 treat such Information as CONFIDENTIAL in accordance with the notice from the date such  
3 notice is received. Disclosure of such CONFIDENTIAL Information prior to the receipt of such  
4 notice shall not be deemed a violation of this Confidentiality Agreement. A Receiving Party who  
5 has disclosed such CONFIDENTIAL Information prior to the receipt of such notice shall take  
6 steps to cure such disclosure by requesting return of the original document and substituting it with  
7 the properly marked one.

8 NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
9 LITIGATION

10 13. The terms of this Order are applicable to information produced by a Non-Party in  
11 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in  
12 connection with this litigation is protected by the remedies and relief provided by this Order.  
13 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
14 additional protections.

15 14. A copy of this Order shall be shown to each attorney acting as counsel for a Party  
16 and to each person to whom CONFIDENTIAL Information will be disclosed.

17 15. Nothing in this Order shall be construed as an admission or agreement that any  
18 specific Information is or is not confidential, subject to discovery, relevant, or admissible in  
19 evidence in any future proceeding.

20 16. Right to Further Relief. Nothing in this Order abridges the right of any person to  
21 seek its modification by the court in the future.

22 17. Right to Assert Other Objections. By stipulating to the entry of this Protective  
23 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
25 Party waives any right to object on any ground to use in evidence of any of the material covered  
26 by this Protective Order.

27 18. The Parties shall comply with the requirements of Local Rule 10-5(b), and the  
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1 Ninth Circuit's decision in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th  
2 Cir. 2006), with respect to any documents filed under seal in this matter.

3 19. This Order shall not be construed to prevent any Party from making use of or  
4 disclosing Information that was lawfully obtained by a Party independent of discovery in this  
5 Litigation, whether or not such material is also obtained through discovery in this Litigation, or  
6 from using or disclosing its own CONFIDENTIAL Information as it deems appropriate.

7 20. If either Party becomes required by law, regulation, or order of a court or  
8 governmental entity to disclose any CONFIDENTIAL Information that has been produced to it  
9 under the terms of this Order, such Party will reasonably notify the other Parties, in writing, so that  
10 the original Producing Party has an opportunity to prevent or restrict such disclosure. The Party  
11 required to disclose any CONFIDENTIAL Information shall use reasonable efforts to maintain the  
12 confidentiality of such CONFIDENTIAL Information and shall cooperate with the Party that  
13 originally produced the Information in its efforts to obtain a protective order or other protection  
14 limiting disclosure; however, the Party required to disclose the Information shall not be required  
15 to seek a protective order or other protection against disclosure in lieu of, or in the absence of,  
16 efforts by the Producing Party to do so.

17 21. Upon termination of this Litigation, either by settlement or other action, any Party  
18 and its counsel that obtained CONFIDENTIAL Information through discovery shall, upon request,  
19 return all such CONFIDENTIAL Information to the Producing Party or certify as to its destruction.  
20 Counsel may retain CONFIDENTIAL Information solely for archival purposes. The restrictions  
21 of this Protective Order shall apply to Counsel for as long as they hold such archival Documents.

22 22. The obligation to treat all Information designated as CONFIDENTIAL in  
23 accordance with the terms of this Order and not to disclose such CONFIDENTIAL Information  
24 shall survive any settlement or other termination of this Litigation.

25 23. The inadvertent production of any Information during discovery in this action shall  
26 be without prejudice to any claim that such Information is subject to the attorney-client privilege  
27 or is protected from discovery as attorney work product. No Party shall be held to have waived  
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1 any rights by such inadvertent production. Upon notification of inadvertent production, the  
2 receiving Party shall not use or divulge the contents of such Information unless subsequently  
3 agreed to by the Producing Party or permitted by the Court. Any such inadvertently produced  
4 Information shall be returned by the Receiving Party within three business days of any written  
5 request therefore. The Receiving Party retains the right to challenge the Information as not  
6 privileged or otherwise protected and discoverable.

7 24. The Parties may seek modification of this Order by the Court at any time, by  
8 stipulation or for good cause.

9  
10 **IT IS SO STIPULATED.**

11  
12 Date: THE LAW OFFICES OF WILLIAM F. HECKMAN, APC

13  
14 By: 

15 WILLIAM F. HECKMAN  
Attorneys for Plaintiffs

16 Date: DURNEY & BRENNAN, LTD.

17  
18 By: 

19 PETER D. DURNEY  
Attorneys for Plaintiffs

20  
21 Date: LAW OFFICES OF TODD BOLEY

22  
23 By: \_\_\_\_\_

24 TODD A. BOLEY  
Attorneys for Plaintiffs

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12 Date: THE LAW OFFICES OF WILLIAM F. HECKMAN, APC

13 By: \_\_\_\_\_  
14 WILLIAM F. HECKMAN  
15 Attorneys for Plaintiffs

16 Date: DURNEY & BRENNAN, LTD.

17  
18 By: \_\_\_\_\_  
19 PETER D. DURNEY  
20 Attorneys for Plaintiffs

21 Date: LAW OFFICES OF TODD A. BOLEY

22 By:  \_\_\_\_\_  
23 TODD A. BOLEY  
24 Attorneys for Plaintiffs



1 Date: 11-6-17

ERICKSON, THORPE & SWAINSTON, LTD.

2 By: Ann M. Alexander  
3 ANN M. ALEXANDER  
4 Attorney for Defendants  
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6 **ORDER**

7 The parties are reminded that all future documents must bear the correct case  
8 number 3:17-cv-00386-WGC.

9 **IT IS SO ORDERED.**

10 DATED: November 8, 2017.

11 William G. Cobb  
12 UNITED STATES MAGISTRATE JUDGE  
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